

111TH CONGRESS
1ST SESSION

S. 1235

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2009

Ms. LANDRIEU (for herself, Mr. COCHRAN, Mr. SPECTER, and Mr. BAYH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Children’s Access to
3 Reconstructive Evaluation & Surgery (CARES) Act of
4 2009”.

5 **SEC. 2. COVERAGE OF MINOR CHILD’S CONGENITAL OR DE-**
6 **VELOPMENTAL DEFORMITY OR DISORDER.**

7 (a) GROUP HEALTH PLANS.—

8 (1) PUBLIC HEALTH SERVICE ACT AMEND-
9 MENTS.—(A) Subpart 2 of part A of title XXVII of
10 the Public Health Service Act is amended by adding
11 at the end the following new section:

12 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**
13 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
14 **MENTAL DEFORMITY OR DISORDER.**

15 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
16 GERY.—

17 “(1) IN GENERAL.—A group health plan, and a
18 health insurance issuer offering group health insur-
19 ance coverage, that provides coverage for surgical
20 benefits shall provide coverage for outpatient and in-
21 patient diagnosis and treatment of a minor child’s
22 congenital or developmental deformity, disease, or
23 injury. A minor child shall include any individual
24 through 21 years of age.

25 “(2) REQUIREMENTS.—Any coverage provided
26 under paragraph (1) shall be subject to pre-author-

1 ization or pre-certification as required by the plan or
 2 issuer, and such coverage shall include any surgical
 3 treatment which, in the opinion of the treating phy-
 4 sician, is medically necessary to approximate a nor-
 5 mal appearance.

6 “(3) TREATMENT DEFINED.—

7 “(A) IN GENERAL.—In this section, the
 8 term ‘treatment’ includes reconstructive sur-
 9 gical procedures (procedures that are generally
 10 performed to improve function, but may also be
 11 performed to approximate a normal appear-
 12 ance) that are performed on abnormal struc-
 13 tures of the body caused by congenital defects,
 14 developmental abnormalities, trauma, infection,
 15 tumors, or disease, including—

16 “(i) procedures that do not materially
 17 affect the function of the body part being
 18 treated; and

19 “(ii) procedures for secondary condi-
 20 tions and follow-up treatment.

21 “(B) EXCEPTION.—Such term does not in-
 22 clude cosmetic surgery performed to reshape
 23 normal structures of the body to improve ap-
 24 pearance or self-esteem.

1 “(b) NOTICE.—A group health plan under this part
 2 shall comply with the notice requirement under section
 3 714(b) of the Employee Retirement Income Security Act
 4 of 1974 with respect to the requirements of this section
 5 as if such section applied to such plan.”.

6 (B) Section 2723(c) of such Act (42 U.S.C.
 7 300gg-23(c)) is amended by striking “section 2704”
 8 and inserting “sections 2704 and 2708”.

9 (2) ERISA AMENDMENTS.—(A) Subpart B of
 10 part 7 of subtitle B of title I of the Employee Re-
 11 tirement Income Security Act of 1974 is amended by
 12 adding at the end the following new section:

13 **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR MINOR**
 14 **CHILD’S CONGENITAL OR DEVELOPMENTAL**
 15 **DEFORMITY OR DISORDER.**

16 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 17 GERY.—

18 “(1) IN GENERAL.—A group health plan, and a
 19 health insurance issuer offering group health insur-
 20 ance coverage, that provides coverage for surgical
 21 benefits shall provide coverage for outpatient and in-
 22 patient diagnosis and treatment of a minor child’s
 23 congenital or developmental deformity, disease, or
 24 injury. A minor child shall include any individual
 25 who has not attained age 22.

1 “(2) REQUIREMENTS.—Any coverage provided
 2 under paragraph (1) shall be subject to pre-author-
 3 ization or pre-certification as required by the plan or
 4 issuer, and such coverage shall include any surgical
 5 treatment which, in the opinion of the treating phy-
 6 sician, is medically necessary to approximate a nor-
 7 mal appearance.

8 “(3) TREATMENT DEFINED.—

9 “(A) IN GENERAL.—For purposes of this
 10 section, the term ‘treatment’ includes recon-
 11 structive surgical procedures (procedures that
 12 are generally performed to improve function,
 13 but may also be performed to approximate a
 14 normal appearance) that are performed on ab-
 15 normal structures of the body caused by con-
 16 genital defects, developmental abnormalities,
 17 trauma, infection, tumors, or disease, includ-
 18 ing—

19 “(i) procedures that do not materially
 20 affect the function of the body part being
 21 treated; and

22 “(ii) procedures for secondary condi-
 23 tions and follow-up treatment.

24 “(B) EXCEPTION.—Such term does not in-
 25 clude cosmetic surgery performed to reshape

1 normal structures of the body to improve ap-
 2 pearance or self-esteem.

3 “(b) NOTICE UNDER GROUP HEALTH PLAN.—The
 4 imposition of the requirements of this section shall be
 5 treated as a material modification in the terms of the plan
 6 described in the last sentence of section 102(a), for pur-
 7 poses of assuring notice of such requirements under the
 8 plan; except that the summary description required to be
 9 provided under the fourth sentence of section 104(b)(1)
 10 with respect to such modification shall be provided by not
 11 later than 60 days after the first day of the first plan
 12 year in which such requirements apply.”.

13 (B) Section 731(c) of such Act (29 U.S.C.
 14 1191(c)) is amended by striking “section 711” and
 15 inserting “sections 711 and 715”.

16 (C) Section 732(a) of such Act (29 U.S.C.
 17 1191a(a)) is amended by striking “section 711” and
 18 inserting “sections 711 and 715”.

19 (D) The table of contents in section 1 of such
 20 Act is amended by inserting after the item relating
 21 to section 714 the following new item:

“Sec. 715. Standards relating to benefits for minor child’s congenital or devel-
 opmental deformity or disorder.”.

22 (3) INTERNAL REVENUE CODE AMEND-
 23 MENTS.—

1 (A) IN GENERAL.—Subchapter B of chap-
 2 ter 100 of the Internal Revenue Code of 1986
 3 is amended by adding at the end the following
 4 new section:

5 **“SEC. 9813. STANDARDS RELATING TO BENEFITS FOR**
 6 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
 7 **MENTAL DEFORMITY OR DISORDER.**

8 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 9 GERY.—

10 “(1) IN GENERAL.—A group health plan, and a
 11 health insurance issuer offering group health insur-
 12 ance coverage, that provides coverage for surgical
 13 benefits shall provide coverage for outpatient and in-
 14 patient diagnosis and treatment of a minor child’s
 15 congenital or developmental deformity, disease, or
 16 injury. A minor child shall include any individual
 17 who has not attained age 22.

18 “(2) REQUIREMENTS.—Any coverage provided
 19 under paragraph (1) shall be subject to pre-author-
 20 ization or pre-certification as required by the plan or
 21 issuer, and such coverage shall include any surgical
 22 treatment which, in the opinion of the treating phy-
 23 sician, is medically necessary to approximate a nor-
 24 mal appearance.

25 “(3) TREATMENT DEFINED.—

“(A) IN GENERAL.—For purposes of this section, the term ‘treatment’ includes reconstructive surgical procedures (procedures that are generally performed to improve function, but may also be performed to approximate a normal appearance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

“(i) procedures that do not materially affect the function of the body part being treated; and

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.”.

(B) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

“Sec. 9813. Standards relating to benefits for minor child’s congenital or developmental deformity or disorder.”.

(b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B of title XXVII of the Public Health Service Act is amend-

1 ed by inserting after section 2752 the following new sec-
 2 tion:

3 **“SEC. 2754. STANDARDS RELATING TO BENEFITS FOR**
 4 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
 5 **MENTAL DEFORMITY OR DISORDER.**

6 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 7 GERY.—

8 “(1) IN GENERAL.—A group health plan, and a
 9 health insurance issuer offering group health insur-
 10 ance coverage, that provides coverage for surgical
 11 benefits shall provide coverage for outpatient and in-
 12 patient diagnosis and treatment of a minor child’s
 13 congenital or developmental deformity, disease, or
 14 injury. A minor child shall include any individual
 15 through 21 years of age.

16 “(2) REQUIREMENTS.—Any coverage provided
 17 under paragraph (1) shall be subject to pre-author-
 18 ization or pre-certification as required by the plan or
 19 issuer, and such coverage shall include any surgical
 20 treatment which, in the opinion of the treating phy-
 21 sician, is medically necessary to approximate a nor-
 22 mal appearance.

23 “(3) TREATMENT DEFINED.—

24 “(A) IN GENERAL.—In this section, the
 25 term ‘treatment’ includes reconstructive sur-

gical procedures (procedures that are generally performed to improve function, but may also be performed to approximate a normal appearance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

“(i) procedures that do not materially affect the function of the body part being treated; and

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.

“(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 714(b) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.”.

(2) Section 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)) is amended by striking “section 2751” and inserting “sections 2751 and 2754”.

1 (c) EFFECTIVE DATES.—(1) The amendments made
2 by subsection (a) shall apply with respect to group health
3 plans for plan years beginning on or after January 1,
4 2010.

5 (2) The amendment made by subsection (b) shall
6 apply with respect to health insurance coverage offered,
7 sold, issued, renewed, in effect, or operated in the indi-
8 vidual market on or after such date.

9 (d) COORDINATED REGULATIONS.—Section 104(1)
10 of the Health Insurance Portability and Accountability
11 Act of 1996 is amended by striking “this subtitle (and
12 the amendments made by this subtitle and section 401)”
13 and inserting “the provisions of part 7 of subtitle B of
14 title I of the Employee Retirement Income Security Act
15 of 1974, the provisions of parts A and C of title XXVII
16 of the Public Health Service Act, and chapter 100 of the
17 Internal Revenue Code of 1986”.

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